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Established in 1938

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May 15, 2024

File Ref: SCH # 2024040655

Caltrans District 4
Attn. Tanvi Gupta
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Oakland, CA 94623-0660

Governor's Office of Planning & Research

May 15 2024

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL ONLY (101-92DC@dot.ca.gov)

**Subject: Notice of Preparation for a Draft Environmental Impact
Report/Environmental Assessment for the U.S. 101 / SR 92 Interchange
Direct Connector Project, San Mateo County**

Dear Tanvi Gupta:

The California State Lands Commission (Commission) staff has reviewed the subject Notice of Preparation (NOP) for a Draft Environmental Impact Report/Environmental Assessment (Draft EIR) for the U.S. 101 / SR 92 Interchange Direct Connector Project (Project), which is being prepared by the California Department of Transportation (Caltrans). Caltrans, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and also the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, if the Project involves work on State sovereign land, the Commission will act as a responsible agency. Commission staff requests that Caltrans consult with us on preparation of the Draft EIR as required by CEQA section 21104, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and

submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The Project, as proposed, appears to encompass existing Commission Lease 3420 for the Caltrans SR 92 bridge crossing Seal Slough/Marina Lagoon, which is ungranted State sovereign land. Once full Project details are known, including project alternatives, please submit plans for Commission staff review. Any activities to occur over or within Seal Slough or Marina Lagoon, such as temporary access or construction easements, may require an amendment to the existing permit and right-of-way map. Activities, if any, within San Francisco Bay may also require an amended or new lease or permit. Please direct any questions to Ken Foster, Public Land Manager (contact information provided below).

Project Description

Caltrans, in cooperation with the San Mateo County Transportation Authority and the City/County Association of Governments of San Mateo County, proposes to create a dedicated connection between SR 92 and the U.S. 101 Express Lanes. Once completed, the Project would provide better connectivity between the U.S. 101 Express Lanes and SR 92 to improve operational efficiency and encourage carpooling and the use of shuttles and buses. The direct connector would include a new bridge over Seal Slough/Marina Lagoon and an elevated connector over the existing U.S. 101/ SR 92 interchange.

From the Project description provided in the NOP, Commission staff understands that the proposed Project would include the following components that have potential to affect State sovereign land:

- All build alternatives have the potential for new bridge piers at Seal Slough/Marina Lagoon within the water or near the shoreline.

Environmental Review

Commission staff requests that Caltrans consider the following comments when preparing the Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

General Comments

1. Project Description: A thorough and complete Project Description should be included in the Draft EIR in order to facilitate meaningful environmental review

of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, maximum area of in-water impact, seasonal work windows, etc.), as well as the details of the timing and length of activities.

In particular, staff requests that the Draft EIR include figures showing the anticipated footprint of all in-water construction activities as well as the boundaries of all existing right of way (ROW) permits in Seal Slough/Marina Lagoon or San Francisco Bay. The Draft EIR should also include a detailed description and illustration for construction of pier structures within Seal Slough/Marina Lagoon and identify all work waterward of the mean high tide line (MHTL). Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work that may be performed, and minimize the potential for subsequent environmental analysis to be required.

2. Public Access: Per the NOP, "For all alternatives, the direct connector would include a new bridge over Seal Slough/Marina Lagoon;" therefore, the Draft EIR should include a section describing the potential for the Project to affect recreational uses and public access to Seal Slough/Marina Lagoon or San Francisco Bay, particularly in light of the Project's construction schedule. The Draft EIR should discuss the recreational uses and access points in the Project vicinity, whether and to what extent these uses would be facilitated or disrupted by the Project, and what, if any, measures could be implemented to reduce any potential negative impacts. This discussion should also identify any safety measures Caltrans will put in place to ensure public safety for recreational activities. Measures could include a public notice and Project area signage provided in advance of the Project, notifying the public of any disruptions, or creation of alternate access points or use areas.

Pursuant to California Streets and Highways Code section 84.5, during the design hearing process, full consideration of, and a report on, the feasibility of providing public access to the subject waterway is required to be provided. The report should consider the following:

- An assessment of public access needs at the Project location, in addition to a benefit analysis of public access alternatives, not alternatives to access
- A description of existing public access points and facilities in the Project vicinity, including the existing condition of these resources and entity responsible for maintenance
- An assessment of existing constraints and hazards that could make on-site public access infeasible

- A feasibility assessment of proposed on-site public access infrastructure, such as construction of trails, stairs, parking areas, trash cans, restrooms, etc.
- If on-site public access is infeasible, a feasibility assessment of alternatives, such as improving existing public access in the Project vicinity or creating new public access points to the subject waterway within the project vicinity
- Environmental impacts of providing public access
- A conclusion on the feasibility of providing public access

Planning for preparation of the report should occur during the earliest stages of Project planning, and the report should be used to support the environmental impact analysis of the Draft EIR. If the report determines that public access is feasible, the Draft EIR must reflect how public access improvements would be incorporated into the Project and identify any associated environmental impacts. To avoid delays with the Commission staff's processing of a potential application, the EIR should, include the requested analysis on the feasibility of providing public access.

Biological Resources

3. For land under the Commission's jurisdiction, the Draft EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, including special status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. Caltrans should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special status plant or wildlife species that may occur in the Project area. The Draft EIR should also include a discussion of consultation with CDFW, USFWS, and the National Marine Fisheries Service (NMFS), as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
4. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS), or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction boats and barges brought in from long stays at distant projects may transport new species to the Project area via vessel biofouling, wherein marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. If the analysis in the Draft EIR finds potentially significant AIS impacts, possible mitigation could include contracting vessels and barges from nearby or requiring contractors to perform vessel cleaning. The CDFW's Invasive Species Program

and Commission Marine Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives> and <https://www.slc.ca.gov/misp/>).

5. Construction Noise: The Draft EIR should also evaluate noise and vibration impacts on fish and birds from potential construction in the water and for landside supporting structures. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

Climate Change

6. Greenhouse Gas (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32; Nuñez, Chapter 488, Statutes of 2006) and required by the State CEQA Guidelines should be included in the Draft EIR. This analysis should identify a threshold of significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.
7. Sea Level Rise: A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. Therefore, Governor Brown issued Executive Order B-30-15 in April 2015, which directs State government to fully implement the Safeguarding Plan prepared by the California Natural Resources Agency, and factor in climate change preparedness in planning and decision making. The 2018 Update to the Safeguarding California Plan provides policy guidance for State decision-makers as part of continuing efforts to prepare for climate risks. The Safeguarding Plan sets forth "actions needed" to safeguard ocean and coastal ecosystems and resources as part of its policy recommendations for state decision-makers.

To implement Executive Order B-30-15, when considering lease applications, CSLC staff must (1) request information from applicants concerning the potential effects of sea level rise on their proposed projects, (2) if applicable, require applicants to indicate how they plan to address sea level rise and what adaptation strategies are planned during the projected life of their projects, and (3) where appropriate, recommend project modifications that would eliminate or reduce potentially adverse impacts from sea level rise, including adverse impacts on public access.

Seal Slough/Marina Lagoon and their surroundings are in a low-lying, flood-prone area that will be affected by rising sea levels. Additionally, because of their nature and location, these lands and resources are already vulnerable to a range of natural events, such as storms and extreme high tides. With this in mind, the Draft EIR should consider discussing how various project components might be affected by sea level rise and whether “resilient” designs have been incorporated. For the proposed Project, this could include the design of the potential new bridge piers or use of bank stabilization.

Cultural Resources

8. Title to Resources: The Draft EIR should mention that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests that Caltrans include measures in the Draft EIR requiring consultation with Commission staff should any cultural resources on State lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the Draft EIR’s Mitigation and Monitoring Plan: “The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.”

Mitigation

9. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures (MMs) must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, §15126.4, subd. (a)). For example, references to the preparation of a spill contingency plan to reduce an impact to waters of the U.S. or State, without calling out the specific activities that will be included in the plan to reduce that particular impact to a less than significant level, is considered deferral. Commission staff requests that specific information be provided in such MMs to demonstrate how the MM is going to mitigate potentially significant impacts to less than significant.

Environmental Justice

10. Environmental justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code § 65040.12) This

definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated [Environmental Justice Policy and Implementation Blueprint](#) in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

Although not legally required in a CEQA document, Commission staff suggests that Caltrans include a section describing the environmental justice community outreach and engagement undertaken in developing the Draft EIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the Community Vulnerability tool developed by the San Francisco Bay Conservation and Development Commission (BCDC), [BCDC Community Vulnerability Tool](#) for the proposed Project and then, as applicable, reaching out through local community organizations, such as the [California Environmental Justice Alliance](#). Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the proposed Project. As a trustee and potential responsible agency, Commission staff requests consultation on this Project and to be kept advised of changes to the Project Description and all other important developments. Should the Commission act as a responsible agency for purposes of Project approval, Commission staff would need to rely on the EIR to make any CEQA-based recommendation to

the Commission on the Project. Please send additional information on the Project to the Commission staff listed below as the Draft EIR is being prepared.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or via email at cynthia.herzog@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Ken Foster, Public Land Manager, at (916) 574-2555 or via email at Kenneth.Foster@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Science,
Planning, and Management

cc: Office of Planning and Research
C. Herzog, Commission
K. Foster, Commission